IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1247 of 1984

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MANEKLAL B BHAGIDAR & 2 - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
MR ASHISH OZA for MR KB ANANDJIWALA for Opponent(s) : 1,
None for Opponent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 29/11/2007

ORAL JUDGMENT

1.0 This appeal is directed against the jdugement and order dated 8th June 1984 passed by learned Judicial Magistrate,First Class, Morbi, in Criminal Case No.1248 of 1983 whereby the learned Magistrate has acquitted the respondents of the charges levelled against them.

2.0 The prosecution case, in short is that the Food Inspector appointed by the State of the local area of Morbi has visited the shop of the respondents on 25th October 1983 and has collected samples of sweets. After following the procedure the samples were sent for laboratory analysis. On receipt of the report it was alleged that the food was found to be adulterated and therefore a complaint came to be filed against the respondents for the alleged commission of offences punishable under sections 7 and 16 of the Food Adulteration Act.

2.2 Necessary investigation was carried out and statements of witnesses were recorded. At the end of investigation, chargesheet was filed against the respondent and the case was numbered as criminal Case No.1248 of 1983 in the Court of learned Judicial Magistrate, First Class, Morbi.

2.2 For the purpose of proving the case the prosecution has examined the complainant and the panch witnesses. After considering the evidence and recording the statement under section 313 and closing pursis the trial court has acquitted the

original accused by giving benefit of doubt. It is against the said judgement and order of acquittal the present appeal has been filed.

3.0 Learned Advocate for the appellant has contended that the public analysis found that the silver leaves did not conform to the standard laid down under the Rules. She further submitted that the samples did not conform to Rule 16 and the trial court has erred in accepting the defence of the accused that the silver leaves used in the sweet was not manufactured by the accused.

4.0 Heard the learned Advocate for the appellant and perused the relevant record of the case. Before proceeding further, it is required to be noted the principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.1 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

5.2 Further, in the case of M.S. Narayana Menon Vs. State of Kerala, reported in (2006) 6 SCC 39, the Apex Court held that in

case of appeal against acquittal, where two view are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

6.0 In the present case, the trial court has found that while collecting the sample there is a breach of rules 12, 13 and 14 and the learned Advocate for the appellant is not able to show anything contrary to the said finding. Further even the analysis report is not accepted by the trial court in view of the fact though the analysis was done on 1st November 1983 the report was sent after a period of 10 days. There is a clear find of the trial court that there is breach of provisions of Rule 14. In Taking the overall view evidence, oral as well as documentary, the trial court has acquitted the respondent.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 It is also required to be noted that in the case of State of Maharashtra V. M/s Gopalprasad Govindprasad Agarwal, reported in AIR 1999 SC 1507, having regard to the fact that the offences

were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 3rd September 1991 and almost 24 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.

9.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

10.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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